

RESPONSE UNDER 37 C.F.R. § 1.116
EXPEDITED PROCEDURE
TC/A.U. ___3728___

REMARKS/ARGUMENTS

Claims 1 - 20 are presented for Examiner Pickett's consideration.

Pursuant to 37 C.F.R. § 1.116, reconsideration of the present application in view of the following remarks is respectfully requested.

By way of the Office Action mailed March 7, 2005, Examiner Pickett rejected claims 1 – 5, and 7 – 15 under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. patent 3,145,840 to Wright in view of U.S. patent 5,377,837 to Roussel. Examiner Pickett also rejected claims 6 and 16 – 20 under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. patent 3,145,840 to Wright in view of U.S. patent 5,377,837 to Roussel and further in view of U.S. patent 5,219,421 to Tipping. These rejections are respectfully **traversed**.

On March 17, 2005, Applicant's attorney, Thomas J. Connelly, conducted a telephone interview with Examiner Pickett and pointed out patentable distinctions between the present claimed invention and the cited prior art. Applicant would like to restate those differences at this time. First, Applicant's claimed invention, see claim 1, paragraph (d) recites that his package is constructed such that the second sleeve will telescopically move upward relative to the first sleeve. In the primary reference to Wright, the upper section 11 can only move downward relative to the lower section 12, see Figures 1 and 2 of Wright. The reason for this is that in Wright, the multiple tissues 10 are not compressed and the container 9 is at its maximum volume before the container is opened. Contrast this with Applicant's invention wherein the articles 12 are compressed before being positioned in the package 10. This means that the articles 12 are retained under compression when the package 10 is sealed by the attachment and release member 32. Upon removal of the attachment and release member 32, the articles 12 will expand and cause the second sleeve 20 to move upward relative to the first sleeve 14, see Figures 1 – 4 of Applicant's patent application. This upper movement can not occur in Wright.

The ability of Applicant's second sleeve 20 to move upward relative to the first sleeve 14 occurs without any extra packaging material being present. As noted above, the upper section 11 in Wright is not capable of telescopically moving upward relative to the lower section 12. The Roussel patent, cited by Examiner Pickett, does contain a mechanism for allowing the internal volume of the package to expand by using a bellow configuration, see Figures 2 and 3(a) – 3(e). However, outward expansion is not the same as telescopically moving upward. In Roussel, the outward expansion occurs instantaneously as soon as the package is opened. In Applicant's invention, the telescopically upward movement begins when the attachment and release member 32 is removed but continues until the compressed articles 12 have returned to an equilibrium state.

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Another noticeable difference is that Applicant's recite in Claim 1, paragraph (c) that "the articles 12 have at least one planar surface 28 aligned substantially parallel to at least one of the first and second walls, 18 and 24 respectively, and are held in compression in a direction that is substantially perpendicular to the planar surface 28." The Wright patent has tissue that are so arranged but which are not compressed. The Roussel patent teaches a different orientation for his articles. Roussel teaches that the articles are arranged perpendicular (not parallel) to the top wall and the articles are held in compression in a direction parallel (not perpendicular) to the top wall. Therefore, one skilled in the art would not know how to combine Roussel into Wright to obtain Applicant's invention without destroying the functionality of the Wright patent.

The above statement is supported by the fact that when Roussel is combined with Wright, the upper section 11 of Wright can not telescopically move upward relative to the lower section 12. Roussel does not teach or describe first and second sleeves. Roussel structure provides for an instantaneous outward expansion but Roussel does not describe a structure which will allow for telescopic upward movement. Roussel teaches outward expansion of the sidewall of the package while Applicant's invention relates to upward movement of the second (top) wall 24 relative to the first (bottom) wall 18. It appears that Examiner Pickett is cherry picking bits and pieces of Roussel and applying them to the Wright invention to try to come up with Applicant's invention. One skilled in the art could not and would not do this for two reasons. First, the specifications in Wright and Roussel do not teach such a combination, and second, one skilled in the art would not have Applicant's invention before them and, therefore, would not know what the final invention should look like nor know how it should function. In view of this, Applicant believes that his invention is not taught nor described by the combination of Wright and Roussel. Accordingly, Applicant believes that his pending claims 1 – 5, and 7 – 15 recite patentable subject matter and are in condition for allowance.

Furthermore, Examiner Pickett cited the Tipping patent as disclosing a removable flap 104 covering an opening 56, see Figures 2 and 3 of Tipping. Examiner Pickett admitted that both Wright and Roussel do not teach such a flap. Even with the additional reference of Tipping, the three cited references do not teach or disclose Applicant's structure or a package that functions as Applicant has claimed. The combination of Wright, Roussel and Tipping still do not teach or disclose a package wherein an upper section 11 can telescopically move upward relative to a lower section 12. In view of this, Applicant believes that his invention is not taught nor described by the combination of Wright, Roussel and Tipping. Accordingly, Applicant believes that his pending claims 6 and 16 - 20 recite patentable subject matter and are in condition for allowance.

In summary, Applicant believes that his present claims 1 – 20 are patentable over the cited references and should be allowed at this time.

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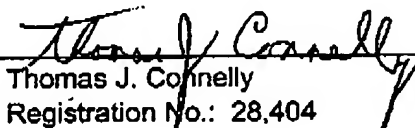
For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-2455.

Respectfully submitted,
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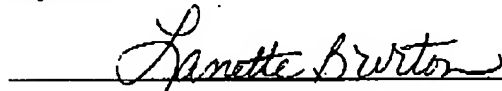
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